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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-956

BILLIE K. FREEMAN, Guardian of TERRY FREEMAN; VERNON RANDALL OSTLER, a minor by STEPHEN OSTLER, his father and natural guardian; MARCK CHARLES SIMMONS, by and through his guardian ROBERT C. SIMMONS,

Petitioners,

—v.—

ALMON FLAKE, *et al.*,

Respondents.

AL WHITE, a minor by his father, V. T. WHITE,

Petitioner,

—v.—

BOARD OF EDUCATION OF HOBBS MUNICIPAL SCHOOL DISTRICT NO. 16, *et al.*,

Respondents.

GREGORY A. CRANSON and RANDALL J. CRANSON, minors, by and through their natural guardian, WALTER N. CRANSON,

Petitioners,

—v.—

EAST OTERO SCHOOL DISTRICT R-1, *et al.*,

Respondents.

GARY CHRISTMAS, a minor by his father and next friend, WILLIAM R. CHRISTMAS,

Petitioners,

—v.—

THE EL RENO BOARD OF EDUCATION, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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IN THE

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No. .....

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THE EL RENO BOARD OF EDUCATION, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Tenth Circuit entered in these cases on September 28, 1971.

Citations to Opinions Below

The opinions of the respective United States District Courts for the Districts of Utah, New Mexico, Colorado and the Western District of Oklahoma are set forth in the Appendix, *infra*, at pp. 11a-27a (*Freeman et al. v. Flake, et al.*), pp. 28a-35a (*White v. Board of Education of Hobbs Municipal School District No. 16*), pp. 36a-40a (*Cranson v. East Otero School District R-1, et al.*) and pp. 41a-52a (*Christmas v. The El Reno Board of Education, et al.*). The *Freeman* and *Christmas* opinions are reported at 320 F. Supp. 531 and 313 F. Supp. 618, respectively.

The consolidated opinion of the United States Court of Appeals for the Tenth Circuit is reported at 448 F.2d 258 and is set forth in the Appendix, *infra* at pp. 1a-10a.

Jurisdiction

The judgments of the United States Court of Appeals were entered on September 28, 1971. On December 14, 1971, Mr. Justice White signed an order extending the time within which to file this petition to and including January 26, 1972. This Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1254 (1).

Question Presented

Whether the state may constitutionally expell or punish male public school students whose hair length exceeds the limits prescribed by school officials?

Constitutional and Statutory Provisions Involved

United States Constitution,
First Amendment:

"Congress shall make no law . . . abridging the freedom of speech"

Fourth Amendment:

"The right of the people to be secure in their persons . . . against unreasonable searches and seizures, shall not be violated . . . "

Ninth Amendment:

"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

Fourteenth Amendment:

" . . . nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 U.S.C. Section 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or

Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Statement of the Case

These various cases were brought separately in United States District Courts in Utah, New Mexico, Colorado and Oklahoma as civil rights actions, pursuant to 42 U.S.C. Section 1983 and 28 U.S.C. Section 1343, to seek redress for the asserted violation of federally protected rights. The petitioners were all public school students who had been expelled, suspended or in other ways disciplined for allegedly violating school regulations requiring certain hair styles for male students. The respondents were school boards and officials in the respective districts.

Hearings were held on the petitioners' requests for declaratory and injunctive relief. In the New Mexico case *(White)*, District Judge Bratton explored the various justifications for the school rule, concluded they were inadequate and held that the board had violated the petitioner's constitutionally protected rights (App., *infra*, pp. 28a-35a). In the other three cases, the district courts sustained the regulations (App., *infra*, pp. 11a-27a, 36a-52a). The background of each of the cases is as follows.

Freeman* v. *Flake

This proceeding involved three cases consolidated for trial. Each case was brought by a male public school stu-

dent suspended for violation of the school's hair length regulations.[1] The regulations typically provided that " . . . male students shall comb and wear their hair so that it does not hang over the ears on the side and their hair must be above the eyebrows in the front" (App., *infra*, p. 19a). District Judge Christensen held hearings lasting three days. Rejecting many of the rationales offered by the school authorities (App., *infra*, p. 17a), and noting that others viewing the evidence might reach a contrary result, he concluded, nevertheless, that the regulations were a reasonable attempt "to minimize disruption and distraction in the school, promote order and safety, redirect the attention of students from an obsession with a reaction against, mere hair length . . . " (App., *infra*, p. 25a). Accordingly, he denied injunctive relief and dismissed the action.

White* v. *Board of Education of Hobbs Municipal School District No. 16

Al White was an average student in good standing at Hobbs High School, New Mexico. Shortly before graduation, he was suspended because of his hair length.[2] There was no contention that Al had been involved in any trouble because of his hair. Although the school written rule commanded male students to "wear neat and trim conventional style hair cuts only", the school officials contended that this was understood to prohibit hair from falling lower than one inch above the eyebrows, over the ears and over the collar.

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[1] Two of the students received educational instruction at home; the third cut his hair under protest and was readmitted to school.

[2] On consent, he was reinstated and allowed to graduate.

District Judge Bratton held a trial which lasted four days. He heard evidence concerning the situation at Hobbs as well as the experience with hair regulations (or their absence) at schools throughout New Mexico. Holding that "the right to wear one's hair at any length is an aspect of personal liberty" protected by the Constitution, he proceeded to examine the various arguments offered by school authorities to justify "regulation impairing a fundamental freedom" (App., *infra*, p. 30a). To test the respondents "expressed apprehensions and concerns as to what might result from the elimination of a regulation governing the length of male hair," he heard evidence from officials at New Mexico schools which had abandoned or liberalized their rules (App., *infra*, pp. 32a-34a). He found that, far from having an adverse effect on educational objective, the elimination of such rules "actually reduces tension and enhances the learning process" (App., *infra*, p. 32a). The court concluded that there were no justifications for "the constitutional invasion which the rule requires". Accordingly, he held the rule unconstitutional and directed the respondents to expunge any reference to the suspension in petitioner's record (App., *infra*, p. 35a).

Cranson* v. *East Otero School District R-1

Gregory and Randall Cranson were good students at La Junta High School, Colorado. The school hair regulation provided: "Boys will be sent for a haircut if the hair falls over the eyes, over their eyes, or over the collar. We will still accept most styles just *be reasonable*" (App., *infra*, p. 38a). For failing to conform to this rule, both boys were expelled for the 1970-71 academic year unless they got haircuts.

District Judge Doyle held a fairly brief hearing on the petitioners request for injunctive relief. He specifically found that "the length of the hair did not create disturbances or disruptions," and that the petitioners were good students "whose individual behavior and attitudes were not affected by hair length" (App., *infra*, p. 37a). Indeed, their readmission was requested in a petition signed by one-third of the student body. However, the court also found that while there was no "disruption raucous in nature", there was evidence of "interference with the educational process" i.e., "a break-down of discipline and student attitudes of defiance" and a hampering of the physical education programs" (App., *infra*, p. 39a). Based on this evidence, the court concluded that there was a rational basis for the adoption of the regulation. The injunction was denied and the complaint dismissed. The Cranson brothers never returned to school.

Christmas* v. *The El Reno Board of Education

Gary Christmas was a senior at El Reno High School, Oklahoma during the 1969-70 school year. The school's policy was that boys whose hair fell over the their eyes, ears or collar would be barred from participation in extra-curricular activities, including commencement exercises. At various times during the year, the petitioner was informed by school officials that he would not be allowed to participate in the commencement ceremonies or receive a diploma unless his hair style conformed to the rules (App., *infra*, pp. 44a-45a). As commencement approached, the petitioner unsuccessfully appealed within the school system.

He then filed this action seeking to be allowed to participate in the graduation ceremony and receive a diploma.

A brief hearing was held by District Judge Bohanon, two days before graduation. He found that the petitioner had received an official "certificate of graduation", and that the diploma and commencement exercises were unofficial. The judge noted that petitioner had been involved in some fights and that other students had once forcibly attempted to cut petitioner's hair. Based on these factors, the court concluded that school authorities had met their burden of justifying their regulation and denied the injunction. Petitioner has never received his high school diploma.

The student petitioners in *Freeman, Cranson* and *Christmas* and the school board in *White* all appealed to the Court of Appeals for the Tenth Circuit. Three of these cases (*Freeman, Cranson* and *White*) were argued simultaneously before the same panel; *Christmas* was argued shortly thereafter. The court of appeals entered its opinions and judgments, affirming those decisions favorable to the school officials and reversing the judgment in favor of petitioner Al White and directing the dismissal of his complaint (App., *infra*, pp. 1a-10a). In reaching these results, the court of appeals held that "complaints which are based on nothing more than school regulations of the length of a male student's hair do not 'directly and sharply implicate basic constitutional values' and are not cognizable in federal courts . . ." (App., *infra*, p. 8a).

It is to review these judgments that *certiorari* is sought.

Reasons for Granting the Writ

1. As this Court must be aware, to say that there is a conflict among the Circuits on the issue of student hair regulations is a substantial understatement.[3] There are literally dozens of reported federal court decisions dealing with this issue. Judicial decisions have ranged from holdings that there is fundamental constitutional protection for a person's choice of hair style to rulings that the issue is too frivolous even to merit a federal court's attention.[4] The issue will continue to be raised so long as school boards persist in regulating the hair length of their male students and those students insist that the Constitution affords them the right to make such decisions for themselves. The Court should resolve these competing claims.

2. This disarray among the precedents reflects the fact that the underlying issues posed by hair regulations are

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[3] To date, at least three Circuits have held that the Constitution affords male public school students a right to wear long hair. *Richards* v. *Thurston*, 424 F.2d 1281 (1st Cir. 1970); *Breen* v. *Kahl*, 419 F.2d 1034 (7th Cir. 1969), *cert. denied*, 398 U.S. 937 (1970); *Bishop* v. *Colaw*, 450 F.2d 1069 (8th Cir. 1971). Two Circuits have taken a contrary position, deferring to the decision of local school officials. *King* v. *Saddleback Junior College District*, 445 F.2d 932 (9th Cir.) *cert. denied*, 40 U.S.L.W. 3249 (1971); *Freeman* v. *Flake*, 448 F.2d 258 (10th Cir. 1971). Two Circuits have looked to the reasonableness of the particular regulation, requiring only a minimal showing by school authorities to validate the rule. *Gere* v. *Stanley*, —— F.2d —— (3rd Cir., 12/27/71, No. 71-1025); *Jackson* v. *Dorrier*, 424 F.2d 213 (6th Cir.); *cert. denied*, 400 U.S. 850 (1970). And the Fifth Circuit, the first circuit court to speak to the issue, see *Ferrell* v. *Dallas Independent School District*, 392 F.2d 697 (5th Cir.), *cert. denied*, 393 U.S. 856, (1969), is currently considering the issues *en banc*.

[4] Compare, e.g., *Lansdale* v. *Tyler Junior College*, 318 F. Supp. 529 (E.D. Tex. 1970) with, e.g., *Alberda* v. *Noell*, 322 F. Supp. 1379 (E.D. Mich. 1971).

profound, for they touch upon the very relationship between the individual and the state. Such regulations are analytically no different than rules which might be made applicable to the general public. If the state may condition the right to a public education upon the length of a boy's hair, it may similarly condition the receipt of any public benefit, or perhaps even make the refusal to comply a criminally punishable offense.

Historically, governments, political or theocratic, have been concerned with and attempted to regulate personal appearance, particularly length and style of hair. See Severn, The Long and Short of It (David McKay Co., 1971). In 1500 B.C., among the laws which Moses received was, in effect, a hair regulation, although with a different content than today's: "Ye shall not round the corners of your heads neither shalt thou mar the corners of thy beard." *Leviticus,* 19:27. By the time of St. Paul, the nature of the rule had changed: "Doth not even nature itself teach you, that, if a man have long hair, it is a shame unto him?" I *Corinthians* 11:14. Centuries later Peter the Great, in an effort to westernize medieval Russia, imposed a tax on beards and mustaches. At approximately the same time, the rulers of China promulgated detailed hair regulations.

Very often governments have been pre-occupied with hair styles because they came to represent or identify particular political attitudes. Thus, for example, the English Civil War was fought between the long-haired forces of the Crown and the "Roundheads", a term used to describe the Puritans because of their hair style. During the time of the French Revolution, short-hair was viewed as a symbol of political radicalism both here and abroad. In

Bavaria, in the mid-nineteenth century, beards were outlawed as a sign of radicalism. Severn, The Long and Short of It, *supra* at 96. In the 1920's, American women adopted shorter hair styles to symbolize the new feminism of that era. In sum, "[h]istory contains many examples of regimes which have attacked and silenced their opponents by requiring conformity of hairstyle or dress." *Crews* v. *Cloncs,* 432 F.2d 1259, 1264 (7th Cir. 1970).

Many of these historical phenomena are manifest in the current controversy over long hair. In the last several years, the wearing of long hair has become *the* symbol of the youth culture, a "counter" culture which has challenged the politics, mores and life-styles of the established order. And because of this identification, long-haired males have been subjected to a variety of discriminations and harassment, public and private, official and unofficial.[5] The fact that long hair has taken on this meaning is perfectly reflected by the reaction of school boards and school officials. Time and again, in these and other cases challenging short-hair requirements, long-hair is characterized as a symbol of dissent, a badge of defiance of authority. And it is sought

[5] While most judicial attention has focused on school hair requirements, courts have taken cognizance of such discrimination in other contexts as well. See, *Lewis* v. *Kugler,* 446 F.2d 1343 (3rd Cir. 1971) (directing a trial on the claim by long-haired travelers on New Jersey's highways that they were singled out for police harassment and subjected to illegal searches); *Roberts* v. *General Food Co.,* —— F. Supp. ——, 40 U.S.L.W. 2188 (N.D. Ohio 9/21/71) (holding that the firing of a long-haired male employee constitutes prohibited sex discrimination since women employees were allowed to wear long hair); cf. *Coates* v. *City of Cincinnati,* 402 U.S. 611, 29 L.Ed.2d 214 (1971) (invalidating an ordinance because its vagueness contained "an obvious invitation to discriminatory enforcement against those whose association together is 'annoying' because their ideas, their lifestyle or their physical appearance is resented by a majority of their fellow citizens." 29 L.Ed.2d at 218).

to be prohibited not because there is anything intrinsically disruptive or distracting about it, but, rather, because of what it is perceived to represent.

Yet state-imposed uniformity of appearance, so often a hallmark of totalitarian regimes, is inimical to our constitutional traditions, as many of the decisions upholding the students' claims have explicitly recognized. Those courts have looked to our heritage and concluded that " . . . among those rights retained by the people under our constitutional form of government, is the freedom to govern one's personal appearance." *Bishop* v. *Colaw, supra* at 1075. Our concepts "touching the relation between individual and state", see *Meyer* v. *Nebraska*, 262 U.S. 390, 402 (1923), do not allow for the kind of uniformity which these hair regulations impose. Particularly in today's crowded and impersonal society, the individual must be afforded a little "breathing space" in which to develop and nurture his personality.

CONCLUSION

For the reasons set forth above, the petition for certiorari should be granted.

Respectfully submitted,

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January 26, 1972

Opinions of the United States Court of Appeals for the Tenth Circuit

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

SEPTEMBER TERM, 1971

No. 71-1007

BILLIE K. FREEMAN, Guardian of TERRY FREEMAN, *et al.*,

Plaintiffs-Appellants,

v.

ALMON FLAKE, *et al.*,

Defendants-Appellees.

No. 71-1051

AL WHITE, a Minor, by his Father, V. T. WHITE,

Plaintiff-Appellee,

v.

BOARD OF EDUCATION OF HOBBS MUNICIPAL SCHOOL DISTRICT No. 16, *et al.*,

Defendants-Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO (D. C. NO. 8485)

No. 71-1072

GREGORY A. CRANSON and RANDALL J. CRANSON, Minors, by and through their Natural Guardian, WALTER N. CRANSON,

Plaintiffs-Appellants,

v.

EAST OTERO SCHOOL DISTRICT R-1, *et al.*,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO (D. C. NO. C-2550)

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BENJAMIN L. CRAIG (Peter M. Eggleston and Ralph N. Wadleigh on the brief), *for Defendants-Appellees in No. 71-1072.*

Before:

PHILLIPS, BREITENSTEIN and HILL,

Circuit Judges.

BREITENSTEIN, *Circuit Judge.*

Regulation of hair styles of male students in state public schools is becoming a matter of major concern to federal courts if one is to judge by the ever-increasing litigation on the subject or by the days of court time expended, and the lengthy briefs presented, in the cases now before us. We are convinced that the United States Constitution and statutes do not impose on the federal courts the duty and responsibility of supervising the length of a student's hair. The problem, if it exists, is one for the states and should be handled through state procedures.

We have three cases, one each from Utah, New Mexico, and Colorado. In each, one or more students were suspended for violation of the school regulation on the length of hair of male students. Jurisdiction is asserted under 28 U.S.C. § 1343 and the claims are based on § 1 of the Civil Rights Act of 1871, now 42 U.S.C. § 1983. Although the regulations differ in language, they essentially require that the hair should not hang below the collar line in the back, the ears on the side, or the eyebrows in front. The evidence need not be detailed. It is remarkably similar in each case. The students desired to express their individualities and the school boards offered justification for the regulations. No claim is made of any racial or religious discrimination. We find nothing in the record to indicate that the hair regulations were motivated by other than legitimate school concerns. The federal district courts in Utah and Colorado upheld the regulations and in New Mexico the regulation was rejected as infringing on constitutional rights.

The federal circuits are sharply divided on the constitutionality of regulations pertaining to the length of the hair of male students in state public schools. The students have prevailed in the First and Seventh Circuits. See Richards v. Thurston, 1 Cir., 424 F.2d 1281; Breen v. Kahl, 7 Cir., 419 F.2d 1034, cert. denied 398 U.S. 937; and Crews v. Clones, 7 Cir., 432 F.2d 1259. The school regulations were upheld in the Fifth, Sixth, and Ninth Circuits. See Stevenson v. Board of Education of Wheeler County, Georgia, 5 Cir., 426 F.2d 1154, cert. denied 400 U.S. 957; Ferrell v. Dallas Independent School District, 5 Cir., 392 F.2d 697, cert. denied 393 U.S. 856; Jackson v. Dorrier, 6 Cir., 424 F.2d 213, cert. denied 400 U.S. 850; Gfell v. Rickelman, 6 Cir., 441 F.2d 444; and King v. Saddleback Junior College, 9 Cir., —— F.2d ——. In Griffin v. Tatum, 5 Cir., 425 F.2d 201, the court held invalid that portion of a regulation which required that the back hair be tapered rather than blocked.

No apparent consensus exists among the lawyers for the students as to what constitutional provision affords the protection sought. Reliance is variously had on the First, Fourth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the Constitution of the United States and on the penumbra of rights assured thereby. The uncertainty of position complicates, rather than clarifies, the issue. The briefs and arguments for the students cavalierly dismiss, or entirely fail to discuss, the problem of federal intervention in the control of state schools in the absence of a direct and positive command stemming from the federal constitution. The hodgepodge reference to many provisions of the Bill of

Rights and the Fourteenth Amendment shows uncertainty as to the existence of any federally protected right.

All of the briefs for the students rely on Tinker v. Des Moines Independent Community School District, 393 U.S. 503, and Griswold v. Connecticut, 381 U.S. 479. Tinker was concerned with the suspension of three students for wearing to school black armbands to publicize their objection to Vietnam hostilities. The Court held that the conduct was within the protection of the Free Speech Clause of the First Amendment and the Due Process Clause of the Fourteenth Amendment. The Court said that the wearing of armbands was closely akin to pure speech and that, 393 U.S. 507-508:

> "The problem posed by the present case does not relate to regulation of the length of skirts or the type of clothing, to hair style, or deportment."

We believe that the effect of this statement is to eliminate hair style from any impact of the decision. The wearing of long hair is not akin to pure speech. At the most it is symbolic speech indicative of expressions of individuality rather than a contribution to the storehouse of ideas. With reference to symbolic speech, the Supreme Court said in the draft card burning cases, United States v. O'Brien, 391 U.S. 367, 376:

> "We cannot accept the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea."

Recognition of the principle that neither students nor teachers "shed their constitutional rights to freedom of

speech or expression at the schoolhouse gate," 393 U.S. at 506, does not mean that the First Amendment contains an express command that the hair style of a male student in the public schools lies within the protected area.

Griswold held that a Connecticut statute forbidding the use of contraceptives violated the right of marital privacy which is within the penumbra of specific guarantees of the Bill of Rights. 381 U.S. at 481-486. We agree with the Ninth Circuit that the conduct controlled by the hair style regulations "is not conduct found in the privacy of the home but in public educational institutions where individual liberties cannot be left completely uncontrolled to clash with similarly asserted liberties of several thousand others." King v. Saddleback Junior College, 9 Cir., —— F.2d ——, slip opinion p. 8 and authorities cited in note 11. A school regulation on the length of a student's hair is not comparable to a state statute regulating behavior in the privacy of a bedroom.

Perhaps the strongest constitutional argument which can be made on behalf of the students is based on the "liberty" assurance of the Due Process Clause of the Fourteenth Amendment. It was on this ground that the First Circuit held for the student in Richards v. Thurston, see 424 F.2d at 1284-1286, a case in which no justification was offered for the regulation. Reliance on justification carries with it the concept that a regulation affecting the due process guarantee of liberty depends for its validity on the reasonableness of the limitation placed on the regulated conduct. The evanescent nature of this standard is illustrated by the three cases before us. On unsurprisingly similar justifications two federal district courts upheld the regulations and one held to the contrary.

We doubt the applicability of the test of reasonableness in the determination of the nebulous constitutional rights here asserted. The issue should not turn on views of a federal judge relating to the wisdom or necessity of a school regulation controlling the length of hair worn by a male student in a state public school. In Ferguson v. Skrupa, 372 U.S. 726, 730, the Court said that the courts will not "substitute their social and economic beliefs for the judgment of legislative bodies." The same principle is pertinent to dress codes of school boards. We do not read Griswold v. Connecticut as overruling Ferguson v. Skrupa. The Griswold decision turned on the specific issues there presented. See 381 U.S. at 482.

The remedy provided by § 1983 is supplementary to any pertinent state remedy. See Monroe v. Pape, 365 U.S. 167, 183. The proliferation of litigation resulting from the expanded use of § 1983 is apparent to anyone familiar with the reported decisions of the courts of the United States. The existence of the § 1983 remedy does not require that federal courts entertain all suits in which unconstitutional deprivations are asserted. A federal constitutional question must exist "not in mere form but in substance, and not in mere assertion, but in assence and effect." Cuyahoga River Power Co. v. Northern Ohio Traction & Light Co., 252 U.S. 388, 397.

The states have a compelling interest in the education of their children. The states, acting through their school authorities and their courts, should determine what, if any, hair regulation is necessary to the management of their schools. In speaking of judicial interposition in the operation of the public school systems, the Supreme Court said in Epperson v. Arkansas, 393 U.S. 97, 104:

> "By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values."

Whether the allegations of a complaint state a claim for relief is a question of law. Bell v. Hood, 327 U.S. 678, 682. Complaints which are based on nothing more than school regulations of the length of a male student's hair do not "directly and sharply implicate basic constitutional values" and are not cognizable in federal courts under the principles stated in Epperson v. Arkansas. It follows that each of the complaints with which we are concerned should have been dismissed for failure to state a claim on which relief can be granted.

The judgments of dismissal in No. 71-1007, the Utah case, and in No. 71-1072, the Colorado case, are severally affirmed. In No. 71-1051, the New Mexico case, the judgment is reversed and the case remanded with directions to dismiss.

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

SEPTEMBER TERM, 1971

No. 709-70

GARY CHRISTMAS, a Minor, by his Father and Next Friend, William R. Christmas,

Plaintiff-Appellant,

v.

THE EL RENO BOARD OF EDUCATION, Independent School District No. 34; Leslie F. Roblyer, as Superintendent of El Reno Public Schools; and Jerry Hutchison, as Principal of El Reno High School,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA (D.C. NO. 70-263)

PHILIP F. HORNING (Bulla & Horning, Vance Raye and Melvin L. Wulf, and Merton M. Bulla, Of Counsel, on the brief), *for Plaintiff-Appellant.*

RICHARD M. FOGG and HARVEY L. HARMON (Fogg & Fogg and Franklin, Harmon & Satterfield, and Rupert M. Fogg, Of Counsel, on the brief), *for Defendants-Appellees.*

Before:

BREITENSTEIN, HILL and BARRETT,

Circuit Judges.

PER CURIAM.

By his complaint plaintiff-appellant Christmas attacked the constitutionality of a school regulation pertaining to the length of a student's hair. The district court denied declaratory and injunctive relief. The facts differ from Freeman v. Flake and other hair cases decided this day in that the student was not suspended but was refused the right to attend commencement exercises and to receive a diploma. Instead he was given a certificate of graduation and accompanying transcript which are the only officially recognized documents or records evidencing graduation.

The judgment is affirmed. See Freeman v. Flake, 10 Cir., —— F.2d ——.

Opinion of the United States District Court for the District of Utah in *Freeman et al.* v. *Flake, et al.*

UNITED STATES DISTRICT COURT

D. UTAH, N. D.

OCT. 2, 1970

Nos. NC 36-70, 37-70 and 249-70

BILLIE K. FREEMAN, Guardian of Terry Freeman,

Plaintiff,

v.

ALMON FLAKE, Principal of Viewmont High School, the BOARD OF EDUCATION OF DAVIS COUNTY SCHOOL DISTRICT, and IRVIN R. CLEVERLY, MORRIS HANSEN, HENRY E. PETERSON, LYNN W. BURTON, and HAROLD J. GAILEY, members of the Board of Education of Davis County School District, and BERNELL WRIGLEY, Superintendent of Davis County Schools,

Defendants.

VYRON RANDALL OSTLER, a minor, by Stephen B. Ostler, his father and natural guardian,

Plaintiff,

v.

BERNARD YOCOM, LAWRENCE L. COOK, LYNN WILCOX, and the BOARD OF EDUCATION OF DAVIS COUNTY SCHOOL DISTRICT,

Defendants.

MARK CHARLES SIMMONS, by and through his guardian Robert C. Simmons,

Plaintiff,

v.

CLIFTON PYNE, Principal of Orem High School, and the BOARD OF EDUCATION OF ALPINE SCHOOL DISTRICT, and DR. BOYD J. LARSEN, FRANK C. GREENWOOD, ELI C. CLAYSON, DR. R. PHIL SHUMWAY, HARVEY E. SMITH, members of the Board of Education of Alpine School District,

Defendants.

JAMES N. BARBER and RICHARD M. DAY, Salt Lake City, Utah, *for Terry Freeman and Mark Charles Simmons.*

FRANK S. WARNER, Ogden, Utah, *for Vyron Randall Ostler.*

FELSHAW KING, Clearfield, Utah, *for Almon Flake and others and Bernard Yocom and others.*

HARVARD R. HINTON, Lehi, Utah, *for Clifton Pyne and others.*

CHRISTENSEN, *District Judge.*

The above-entitled cases, consolidated fo ial because they involve common questions of fact and law, present questions concerning the power of school boards in the State of Utah, and school officials acting under them, to promulgate and enforce regulations dealing with the length of hair of students and related matters of appearance and grooming.

In No. NC 36-70, Freeman v. Flake, plaintiff, represented by his mother as guardian, is a student in Viewmont High School, one of the schools maintained and administered by Davis County School District, State of Utah. It is alleged that on or about September 17, 1970, the defendant Principal suspended or expelled this student preventing him from attending further classes, all without justification, legal excuse or opportunity for hearing, but because of the refusal of Terry Freeman to comply with the defendants' orders or regulations relating to the length or style of students' hair.

In NC 37-70, Ostler v. Yocom, the plaintiff was enrolled as a student in Sunset Junior High School, one of the junior high schools maintained and administered by the Board of Education of Davis County School District. It is alleged that on or about September 16, 1970, the defendant Yocom requested the vice-principal and the principal of this school to suspend or expel the plaintiff; and that the defendants have subsequently prevented plaintiff from entering or attending any classes at the Sunset Junior High School because of the plaintiff's refusal to comply with the defendants' orders or regulations relating to the length or style of hair.

In No. C 249-70, Simmons v. Pyne, similar allegations are made on behalf of Simmons.

The evidence shows that the students were suspended because of their refusal to comply with the regulations as to length of hair, that while Freeman was performing marginally otherwise, the suspension could not be justified on other grounds. Simmons and only to a lesser extent Ostler were considered good students aside from the problem involved here. The hair of all three was persistently maintained in a manner to clearly violate the requirements

in question and abundant opportunity was afforded each to bring himself into compliance before the suspensions. Freeman and Ostler have the opportunity of keeping up their school work through home teachers provided by the defendants during their periods of suspension. Simmons has now had his hair cut sufficiently to bring him into compliance with the regulation and is in school without abandoning his contention that his future conduct will be unconstitutionally restricted unless the regulation is declared invalid. I do not think that the case is moot for this reason. Ostler is the only one who gave any reason other than general ones for his resistance to the rules, claiming that long hair was necessary to cover a scar on his head. Personal inspection is convincing that the scar is covered equally well by length within the regulation. There is nothing in the evidence to suggest that this was his real reason for non-compliance or that if it was the school authorities would not permit any reasonable departure in view thereof.

Jurisdiction in each case here is claimed on the basis of 28 U.S.C. § 1343, 42 U.S.C. §§ 1983 and 1985, upon amendments I, IV, IX and XIV of the Constitution of the United States, and upon 28 U.S.C. §§ 2201, 2202. This court does have jurisdiction over the subject matter of the actions and the persons of the parties.

In the first two cases venue is appropriately laid in the Northern Division of the District of Utah; and upon consolidation the third case was transferred, with the consent of the parties and pursuant to the rule of court, for disposition in the Northern Division in connection with the prior cases.

The cases initially came before the court on applications for restraining orders and preliminary injunctions pen-

dente lite; but by reason of the urgency of an early determination, and in order to avoid duplication by separate hearings with reference to preliminary injunctive relief and upon the final merits, the parties have stipulated and the court has approved the hearing of the cases upon their final merits at this time, there having been a waiver of time for pleading and pre-trial discovery and a stipulation that except as indicated otherwise in the evidence the complaints in the cases may be deemed by the respective defendants.

Evidence has been taken over a period of three days; in addition pre-trial briefs and oral arguments of counsel have been considered. The court now considers itself fully advised and believes it essential in the public interest, for the welfare of the students directly involved and the student bodies of the schools generally to announce its decision without further delay.

Contending that each answer must be in the affirmative, the plaintiffs present the following questions for determination:

1. Whether requiring a student to conform to a regulation governing length or style of hair as a prerequisite to attending a public school violates his and his parents' fundamental rights of privacy guaranteed by the First Amendment and the "penumbra" of the First, Fourth, Ninth and Fourteenth Amendments to the Constitution of the United States.

2. Whether suspension or expulsion of a student from public school for wearing long hair denies him the freedom of expression guaranteed and protected by the First Amendment.

3. Whether suspension or expulsion of a student from public school for failure to comply with a regulation published or unpublished, governing the length or style of hair, violates the Due Process Clause of the Fourteenth Amendment.

4. Whether a regulation which prevents students from attending public schools solely because of the length of their hair is a violation of the Equal Protection Clause of the Fourteenth Amendment as an unreasonable classification.

5. Whether the regulation under which plaintiffs were suspended or expelled is unconstitutionally vague.

I have indulged a wide range of evidence in these cases to have assurance that no significant points are overlooked. The students involved and their witnesses, as well as the experts, have been permitted rather freely to express their opinions concerning the regulations in question, as well as general problems of student relationships and school administration.

With much of what has been said on behalf of each side, I can agree—the importance of individual liberty in schools as well as out, the requirement to observe constitutional limitations in school as well as out, the necessity of reasonable regulations to advance and to protect the learning process, the desirability of collaboration and mutual discussion in the formulation of school policies, the necessity or ultimate responsibility upon school administrators to administer and upon teachers to teach, the desirability that every student, without interference, receive in-school training with the maximum self-determination and liberty consistent with the functioning of a school, the learning process

and the rights of others, and the necessity that those defying reasonable regulations not be permitted to break down school administration in perversion of their own attitudes and the destruction of a system indispensable to the discharge of the mission of the schools.

There is much in the testimony with which I do not agree. I cannot accept the contention that all people wearing long hair are mentally ill on the one hand, or on the other that they are as a general rule more creative or scholarly than those who do not. I do not agree that the function of a school is necessarily to teach the philosophy of the majority of the patrons of school, much less the philosophy of a minority of the patrons or of those who have no connection with its problems. It is questionable that there is any inherent or necessary correlation between long hair and improper conduct. There is evidence indicating that long hair creates negative attitudes if not opposition from the majority of students, that those with long hair tend to isolate themselves from the main stream of student activity and that long hair in the climate of the time is disruptive within the schools in question of proper school discipline and the learning process to an extent.

The experts and the evidence in general are in substantial agreement that beyond whatever excessively long hair indicates about the personal attitude and mind of individuals it has become within the fabric of our society a symbol of dissatisfaction and protest to which a substantial number of people, for reasons sufficient to themselves, respond and with which young minds in the process of resistance to authority are likely to identify without any real ideological view except the testing of parental or school authority. There seems to be a correlation between long hair and improper grooming aside from hair.

There was a sharp difference of opinion as to the necessity or benefits of the regulations in question in these or other schools among the witnesses, but those directly connected with the schools and school districts in question were in substantial agreement that they were beneficial if not essential, and there is indication that they have the broad support not only of the patrons and administrators but of the students therein.

It should be noted that in what has been said hereinbefore and in the discussion which follows the term "long hair" generally is used to refer to hair of a junior or senior high school male student permitted to grow substantially beyond the limits referred to in the regulation in question. That is not to say that hair within the limits may not be considered "long", depending upon the viewpoint. And I am impressed with the statement of one of the witnesses that between close shaven hair and the limits of the regulation there is a considerable leeway for individual taste (including what may be regarded by many as long hair for male students). And I must emphasize that anything which has been or will be said about "long hair" in no way is intended as a moral or ideological judgment. We are not concerned with any point except the right of junior or high school students to wear long hair beyond and in defiance of school regulations, and we are not concerned necessarily with this question in the abstract but with reference to the specific regulations involved here and under the circumstances shown by the evidence.

While the applications vary somewhat among the cases, the regulation of the Davis County School Board on the subject in question is characteristic and raises all of the issues with which we are concerned in these cases:

"The Board of Education of the Davis County School District, in support of the aims of public education, recognizes that standards of proper dress and grooming seriously affect the behavior of students attending school. Experience has demonstrated that the atmosphere for a good learning situation and a wholesome academic environment is improved when proper dress, proper grooming and when proper standards of decorum and discipline are adhered to by the studentbody. The Board of Education, therefore, strongly urges that every effort be made to promote and maintain such personal maturity and development.

"As a student seeks purposely to draw attention to himself through oddities of dress and styles, he is usually displaying a false sense of values and will, quite likely, not fulfill himself academically in his school and his studies. Furthermore, experience indicates that there are sanitation and safety factors directly related to proper dress and grooming. Furthermore, experience indicates there is a real and reasonable connection between proper dress and grooming and the successful operation of the educational system with the maintenance of school discipline. Therefore, the Board of Education of the Davis County School District sets the following standards for school dress and appearance:

"1. All students shall maintain their hair in a clean and well-washed manner and male students shall comb and wear their hair so that it does not hang below the collar line in the back nor hang over the ears on the side and their hair must be above the eyebrows in the front. Male students shall be clean shaven and

their sideburns shall not be lower than the bottom of the ear and mustaches properly trimmed.

"2. All students shall be required to wear clean clothing and no immodest form or manner of dress shall be allowed. Shorts and other similar attire shall not be worn nor shall any clothing be worn which displays obscene or suggestive words or pictures nor shall any clothing be worn which is so extreme or odd that it may disrupt or tend to disrupt or interfere with school functions. School officials may require students to wear certain types of clothing for health or safety reasons in connection with certain specialized activities.

"If a student does not comply with these regulations upon direction of the principal, he may be suspended from school until such time as he does comply. Any student so suspended shall in any event be required to bring his parents or guardian to school for a conference with the principal before reinstatement at which time the principal may decide to reinstate the student or to continue the suspension.

"In the event the principal decides to continue the suspension after having met with the parents or guardian, the student, through his parents or guardian, shall have a right to appeal the decision of the principal to the Director of Pupil Personnel of the Davis County School District within Ten (10) days after the decision of the principal. The Director shall thereafter set a time for conducting a conference at which time the student, parents or guardian shall be given a hearing. At the conclusion of such informal hearing the Director shall either affirm the decision of the school principal or order the student reinstated.

"If the Director affirms the decision of the school principal, the student, through his parents or guardian, may appeal in writing to the Superintendent of Schools within Ten (10) days from the date of such decision. The Superintendent of Schools as the Executive Officer of the Board of Education shall thereafter review the decision of the Director of Pupil Personnel, with or without holding a hearing, and thereafter render a decision affirming the decision of the Director or ordering the student reinstated.

"At all times during the aforementioned appeal procedures, the student shall remain on suspension unless otherwise ordered by the Superintendent of Schools."

The Alpine School District Regulation is substantially the same with reference to length of hair, although varying in other respects. They were put in their present form shortly before the suspensions in question, but their content and substance have been in force and well understood over a substantial period of time theretofore.

There is no question of the statutory and inherent right of school boards within the State of Utah to promulgate and appropriately enforce reasonable regulations concerning the conduct, deportment, and grooming of students attending public schools placed under their administrative control, providing that such regulations do not offend rights guaranteed by the Constitution of the United States. Starkey v. Board of Education of Davis County School District, 14 Utah 2d 227, 381 P.2d 718 (1963); Beard v. Board of Education, 81 Utah 51, 16 P.2d 900 (1932); Davis v. Ogden City, 117 Utah 315, 215 P.2d 616 (1950); State v. Twitchell, 8 Utah 2d 314, 333 P.2d 1075 (1959).

The point has been advanced, more by way of suggestion in the pleadings or in inferential argument rather than solidly set out, that some problem of procedural due process is involved. The evidence and the final statement of plaintiffs' counsel have set such point at rest, for it now seems clear that the students involved were well aware of the regulations, had been repeatedly admonished in view of them, had, with the knowledge and acquiescence, if not support, of their parents elected to defy them and had rejected the known and established system of review through higher administrative authority. I do not believe that failure to exhaust administrative remedies would bar relief here under the civil rights acts but I am also of the opinion, confirmed by the statements of counsel, that procedural due process is not in issue.

Whatever uncertainty might exist concerning the term "proper grooming" in other respects, this is not involved in the present cases; because the school authorities acted upon the express requirements of length of hair, the validity of the regulations with respect thereto is the only point here.

I must reject the argument advanced by counsel for one of the plaintiffs that the regulation is uncertain or overly broad. General reference to "proper grooming" is not in question now. Indeed, the regulation as to hair is explicit, and if there were any way to draw lines, the lines have been rather specifically drawn in language that no student could misunderstand. And if a line is permissible someplace, it seems that the line drawn of not below the collar, not over the eyes, or not over the ears, is as manageable and reasonable as any other having practical significance. Thus, I hold that the regulation is not void on its face for

uncertainty or overbreadth and that we must look further into its nature and effect in order to determine its constitutionality.

Nor need we pause long at the contention that length of hair beyond the regulation is in itself a form of symbolic speech which with especial sensitivity beyond ordinary respect for constitutional limitations must be protected under the First Amendment. It is argued that such conduct, like words, can be an expression or dramatization of a moral, sociological, political, religious or ideological viewpoint. However the argument may be sustained in another context, more is required here than counsel's suggestion that the plaintiffs perhaps were indicating a profound or hidden ideological view unknown even to themselves and thus that the right of symbolic free speech might be involved. The main reason assigned by the plaintiffs for resistance to the regulation was that they "wanted" to have longer hair, they "liked" it and they thought it was their "right".

Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969), does not suggest that this is "symbolic, free speech". On the contrary, this case states, among other things:

> "The problem posed by the present case does not relate to regulation of the length of skirts or the type of clothing, to hair style, or deportment. Cf. Ferrell v. Dallas Independent School District, 392 F.2d 697 ([5th Cir.] 1968); Pugsly v. Sellmeyer, 158 Ark. 247, 250 S.W. 538 (1923). It does not concern aggressive, disruptive action or even group demonstrations. Our problem involves direct, primary First Amendment rights akin to 'pure speech.'"

And in United States v. O'Brien, 391 U.S. 367, 376, 88 S.Ct. 1673, 1678, 20 L.Ed.2d 672 (1968), the Supreme Court said:

> "We cannot accept the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea."

As noted by Judge Doyle in Brick v. Board of Education, Sch. Dist. No. 1, Denver, Colo., 305 F.Supp. 1316, (D. Colo. 1969):

> "This does not mean though that conduct of the kind here in question does not have any constitutional protection. It is protected to the extent that the due process clause of the Fourteenth Amendment prohibits the arbitrary deprivation of liberty. This right is, however, both substantively and procedurally distinct from the paramount right to freedom of speech . . . Legislative power in this area is circumscribed to a much greater degree than in the area of conduct, and courts require that the state come forward with the evidence that such a regulation is necessitated by a compelling state interest before its constitutionality will be sustained . . . On the other hand, the role of a federal court in reviewing claims that state regulations of liberty violate substantive due process is relatively narrow."

In Tinker v. Des Moines Sch. Dist., *supra*, neither the trial court nor the Supreme Court reached the question whether even in the sensitive free speech area a regulation was justifiable in circumstances similar to the present ones before the court.

If we are to extrapolate a result from *Tinker* and the cases dealing more precisely with conduct as distinguished from speech, in the context of the evidence before this court, it would be that school board action reasonably designed to foster legitimate educational aims and to promote the learning process, order or safety of students will be sustained if not arbitrary or capricious. The state in the area of regulation of grooming and in connection with its broader but related functions is advancing a vital state interest. Those activities which have a disruptive effect on the learning atmosphere in public schools are not improper subjects for regulation.

The evidence in my opinion clearly shows that not only were the regulations with regard to hair length adopted after careful consideration and in the intended best interest of the educational process, but they were based upon reasonable findings supported by the evidence tending to indicate to the reasonable mind that such regulations would minimize disruption and distraction in the school, promote order and safety, redirect the attention of students from an obsession with, or reaction against, mere hair length—as an achievement or a counter-achievement—would direct attention to more productive activities, and would minimize the danger of distraction from educational pursuits. Others considering such evidence might come to a different conclusion but this does not destroy the underpinnings of the boards' determinations, since those boards, rather than others, are charged with the legal responsibility of adopting regulations consistent with constitutional limitations and the dictates of reason. I reject any broad notion that within those limitations federal judges are established as over-

seers to regulate the exercise of state discretion as well as to see that constitutional limitations are not breached.

Under circumstances having some relationship to the present cases, many courts have sustained similar regulations. Leonard v. School Committee, 349 Mass. 704, 212 N.E.2d 468, 14 A.L.R.3d 1192; Davis v. Firment, 269 F.Supp. 524, (D.C.La.), affd., 408 F.2d 1085 (5th Cir. 1967); Ferrell v. Dallas Independent School District, 392 F.2d 697 (5th Cir. 1968); Akin v. Board of Education of Riverside Unified School District, 262 Cal.App.2d 161, 68 Cal.Rptr. 557 (1968); Brick v. Board of Education, Sch. Dist. No. 1, Denver, Colorado, 305 F.Supp. 1316 (D.C. Colo.1969); Jackson v. Dorrier, 424 F.2d 213 (6th Cir. 1970); Stevenson v. Wheeler County Board of Education, 426 F.2d 1154 (5th Cir. 1970); Neuhaus v. Torrey, 310 F.Supp. 192 (D.C.Cal.1970); Farrell v. Smith, 310 F.Supp. 732 (D.C.Maine 1970); Crews v. Clones, 303 F.Supp. 1370 (D.C.Ind.1969); Pritchard v. Spring Branch Independent School District, 308 F.Supp. 570 (D.C.Tex.1970); Wood v. Alamo Heights Independent School District, 308 F.Supp. 551 (D.C.Tex.1970); Christmas v. El Reno Board of Education, 313 F.Supp. 618 (D.C.Okl.1970). Other courts have reached contrary conclusions on facts which bear some similarity to the present cases. Breen v. Kahl, 419 F.2d 1034 (7th Cir. 1969), cert. denied, 398 U.S. 937, 90 S.Ct. 1836, 26 L.Ed.2d 268 (1970); Westley v. Rossi, 305 F.Supp. 706 (D.C.Minn.1969); Griffin v. Tatum, 300 F.Supp. 60 (D.C. Ala.1969), affd. in part, 425 F.2d 201 (5th Cir. 1970); Olff v. East Side Union High School District, 305 F.Supp. 557 (D.C.Cal.1969); Richards v. Thurston, 304 F.Supp. 449 (D.C.Mass.1969), affd., 424 F.2d 1281 (1st Cir. 1970); Calbillo v. San Jacinto Junior College, 305 F.Supp. 857 (D.C. Texas 1969); Lucia v. Duggan, 303 F.Supp. 112 (D.C.Mass.

1969); Finot v. Pasadena City Board of Education, 250 Cal.App.2d 189, 58 Cal.Rptr. 520 (1967). Counsel have not reported nor have I been able to find that either the United States Court of Appeals for the Tenth Circuit or the Supreme Court has yet ruled upon a case closely in point.

I am of the opinion that the line of authority first cited represents the best if not the majority view on the question.

I shall not attempt here to re-examine beyond what I have said the detail of reason going into the cited cases, I conclude in view of my evaluation of those reasons, the evidence before the court, and the controlling principles of law, that the enforcement of the regulations by suspension pending compliance in the context of these cases does not violate either the students' or the parents' fundamental rights of privacy, does not deny freedom of expression guaranteed and protected by the First Amendment, does not violate either procedural or substantive due process or the equal protection clause of the Fourteenth Amendment, that the regulations are not unconstitutionally vague, or overly broad, and that there is no basis for enjoining their application and enforcement in the schools involved here under existing circumstances.

Wherefore, this opinion being deemed sufficient as findings of fact and conclusions of law, pursuant to the requirements of Rule 52, F.R.Civ.P., it is now ordered that injunctive relief should be, and it is hereby, denied, and the actions of the plaintiffs dismissed, without costs.

Opinion of the United States District Court for the District of New Mexico in *White* v. *Board of Education of Hobbs Municipal School District*

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

No. 8485 Civil

AL WHITE, a minor by his father, V. T. WHITE,

Plaintiff,

vs.

BOARD OF EDUCATION OF HOBBS MUNICIPAL SCHOOL DISTRICT No. 16; HARRY MCADAMS, HERB KING, EDWARD BURKE, DALE COOPER, and D. A. COCHRAN, individually and as members of the said Board; R. N. TYDINGS, individually and as Superintendent of the said District No. 16; VIRGIL L. WELCH, individually and as Principal of Hobbs High School,

Defendants.

DECISION OF THE COURT

I would like to express my appreciation to counsel for a very excellent and able presentation on both sides of the case, for obviously coming well prepared and for having considered the many cases that have been decided in this field. The issue is one of significance and of societal importance. It is perhaps a microcosm of the ever present conflict between the status quo and change.

There has been enough literature written on the field that I find no necessity to write Findings of Fact and

Conclusions of Law or an Opinion. The remarks which I now make will constitute the Findings of Fact and Conclusions of Law of the Court.

As I say, there have been many cases in this field and on this subject, and the one pervading rule that comes from all of them is that each case is to be decided on its own facts. So far as I am concerned, the issues in this case are limited solely:

(1) To a determination of whether the School Board of Hobbs has borne its burden of justifying a regulation limiting the length at which male students in Hobbs High School may wear their hair.

I want it explicitly understood, we are not talking about a code, in so far as it relates to dress or any other regulation, other than one limiting the length at which male students may wear their hair.

(2) The further issue is whether the rule, as promulgated at Hobbs, is too vague to sufficiently apprize the plaintiff of what hair length was proscribed.

I recognize certain principles and am fully cognizant of them. Numbers of them have been written in the cases which have been decided on the subject, and I take the liberty of adopting and quoting from some of those cases, because they say very well the guiding principles, and I don't need to restate them.

Judicial interposition in the operation of the public school system of the nation raises problems which require great care and restraint. By and large, public education in our nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems, and which do not directly and sharply

implicate basic constitutional values. *Tinker* v. *Des Moines Independent Community School District*, 393 U.S. 503 (1968).

However, in our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the states must respect, just as they, themselves, must respect their obligations to the state. *Tinker* v. *Des Moines Independent Community School District*, *supra* at 511.

It must be and is recognized, however, that school authorities are entitled to make and enforce reasonable regulations for maintaining an effective school system, and the Courts should refrain from interference with the functions of the school authorities, unless their action is arbitrary and unjustified so as to constitute a significant encroachment upon a personal liberty.

This Court accepts and adopts the view that the right to wear one's hair at any length is an aspect of personal liberty protected by the United States Constitution. *Richards* v. *Thurston*, 424 F.2d 1281 (1st Cir. 1970); *Breen* v. *Kahl*, 419 F.2d 1034 (7th Cir. 1969).

In order for the State, through its school officials, to sustain a regulation impairing a fundamental freedom, such as that here involved, the State's subordinating interest in the regulation must be compelling. Such a regulation bears a "substantial burden of justification," *Griswold* v. *Connecticut*, 381 U.S. 479, at 505 (1965), and each case and each regulation stands squarely on the facts of that case.

It is therefore necessary to determine from the evidence which has been presented in this Court whether the defendants have met their substantial burden of justifying this regulation which invades a constitutionally protected right of the plaintiff.

There is a second issue involved and that is the question of whether, if the rule is justified, it is sufficiently unambiguous to apprize those to be governed by it of what they must do to comply.

I'll tell you my decision in a nutshell. It is that the Court has concluded that the defendant school board has not borne its burden of justifying the challenged rule, and the rule is therefore violative of the Constitution of the United States and is not a justified exception thereto.

From the evidence in this case, it has been argued that there would be a breakdown in the learning process, disruptions and distractions, a breakdown in discipline and in student attendance if there were an absence of any rule governing the length of male hair.

It has also been argued that long hair presents problems, particularly of safety, in the field of vocational courses.

Now, the reported cases which have considered this problem have a great deal of such evidence in them, and in many of the cases rules limiting the length at which male students may wear their hair have been upheld on such allegations and such grounds.

However, a review of these cases persuades the Court that no evidence was introduced in any of them which is similar to the evidence which has been introduced in this case. There was no evidence in those cases to overcome that advanced by the school authorities in support of their position. This case is entirely different.

Evidence has been presented in behalf of the defendants from school administrators and teachers in schools which have in force some kind of hair regulation. They have expressed apprehensions and concerns as to what might result from the elimination of a regulation governing the length of male hair.

The Court recognizes that these administrators and teachers are conscientious and concerned educators, and it certainly respects their views and opinions. However, the defendants have presented no evidence from schools which have eliminated such a requirement to show that the absence of such a rule would result in increased discipline problems or other problems. What evidence they have presented, primarily from the Hobbs High School, as well as their other evidence, shows that there are disruptions, distractions and some problems within their existing rules. There has been absolutely no evidence to show what would happen for the worse without any rule or with the elimination of their rules.

On the contrary, the plaintiffs have offered evidence from administrators and teachers in schools which do not have such a rule to show that its absence has not created discipline, absenteeism or other problems.

Indeed, the plaintiff's evidence shows that experience, as opposed to what the Supreme Court has called, and to which Mr. Phillips referred, "vague, undifferentiated fears" of what might happen without such a rule, has proven that the absence of such a rule has had no adverse effect on the educational process. On the contrary, the plaintiff's evidence indicates that its absence actually reduces tension and enhances the learning process.

The evidence in the case shows that in the Albuquerque Public Schools the majority have abandoned such a rule.

I have forgotten the exact number, but, if my memory serves me right, we had direct testimony from teachers or administrators at three different Albuquerque High Schools which have no such rule, and the evidence from each of those persons was that the absence of such a rule created no problems and indeed operated to enhance the learning process.

Apparently numbers of other schools throughout the state have abandoned, for example, the school in Carlsbad, a rule on the length of male hair with no adverse effect to the educational system from the evidence brought out here.

Further, as to the evidence on vocational education and the adverse effects resulting from the elimination of a hair length rule, the experience of the largest vocational institution in the state, which has no such rule, is that the absence of it does not create any problems in that school which it has not been able to manage. The evidence indicates that there is no breakdown in discipline or other adverse effects, either on the individual, the student body as a whole, the administrators or the faculty.

Neither the circumstances of location, distance, opposition of the population or any other factor that has been introduced here shows that Hobbs is sufficiently different from Carlsbad or Albuquerque or anywhere else in the State to justify the necessity for such a rule.

It is difficult for the Court to comprehend how there can be a justification and a necessity for such a rule in Hobbs and not in Carlsbad, or in Manzano and not in Sandia High School.

There is a conflict in the evidence of expert opinions as to whether the absence of such a rule would cause problems and adversely affect the students or the educational

process. Insofar as there is a conflict in the evidence, I resolve that conflict in favor of the plaintiff.

As Mr. Phillips, I believe, or Mr. McKinnon pointed out, you have witnesses who are conscientious and competent testifying both for the plaintiffs and for the defendants. The only difference is that plaintiff's witnesses come with experience in exactly the problem here, and they advise the Court that they find that it does not create problems to not have such a rule. I believe them, and I accept their testimony.

Now, in making the decision which the Court does here today, it certainly is not expressing approval of lengthy male hair. From an aesthetic point of view, the Court finds very little, if not nothing, to justify it. However, considerations of the aesthetic viewpoint of the Court aside, there has been no showing to justify the invasion by this rule of the Constitutional right of this plaintiff.

Even if one might consider the question of the aesthetic viewpoint of the community or the school, evidence has not been sufficient on that to convince the Court that such considerations justify the constitutional invasion which the rule requires.

Therefore, it is the conclusion of the Court that judgment should be entered in favor of the plaintiff.

I might say on the second point to which I said I would address myself, that of whether the rule is so vague as to be constitutionally infirm, I have grave doubts whether the rule is sufficiently specific to meet constitutional standards. The rule as set out in the Handbook I think merely says "neat" and that apparently depends on how the administrator means that from year to year. His determination as to length has varied at times.

I don't know that that meets constitutional requirements, but I don't need to get to that point.

As I say, the Court will enter judgment in favor of the plaintiff and award costs to the plaintiff and hold that the rule or regulation is violative of the Constitution of the United States, is not justified, and that therefore, any reference in the school records of plaintiff to having been suspended for violation of the rule will be expunged.

HOWARD J. BRATTON
United States District Judge

Opinion of the United States District Court for the District of Colorado in *Cranson* v. *East Otero School District R-1, et al.*

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. C-2550

GREGORY A. CRANSON and RANDALL J. CRANSON, Minors by and through their Natural Guardian WALTER N. CRANSON,

Plaintiffs,

vs.

EAST OTERO SCHOOL DISTRICT R-1; JACK L. REED, Individually and as District Superintendent; GUY D. CALONGE, HENRY HOLMS, CLARENCE YERGERT, CALVIN CRANSON, and JOHN GRAVES, Individually and as Members of the School Board; MARVIN MARSH, Individually and as Principal of La Junta High School, La Junta, Colorado,

Defendants.

Messrs. Tom Holland and Charles E. Butler, Attorneys at Law, Colorado Rural Legal Services, Inc., 12 East 4th Street, La Junta, Colorado 81050, and Mr. Guy T. Saperstein, Attorney at Law, 970 Aurora Avenue, Post Office Box 1367, Boulder, Colorado 80302, for Plaintiffs; Mr. Ralph N. Wadleigh, Attorney at Law, Colorado Bank &

Trust Building, La Junta, Colorado 81050, and Henry, Cockrell, Quinn & Creighton, by Messrs. Benjamin L. Craig and Peter M. Eggleston, Attorneys at Law, 1415 Security Life Building, Denver, Colorado 80202, for Defendants.

MEMORANDUM OPINION AND ORDER

DOYLE, *Judge*

The plaintiffs have filed an action in which they seek an injunction, temporary and permanent, compelling the East Otero School District to admit them to high school. They seek a holding that the regulation of La Junta High School pertaining to hair length of students is unconstitutional and void as applied to them. One of the plaintiffs is a high school sophomore and the other is a junior.

The suit has been brought as a civil rights action, pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1343. Heretofore, on October 13, 1970, we denied a motion for a temporary restraining order pending the hearing of the case on its merits. The trial was had on October 21, 1970, and the matter now stands submitted.

The evidence establishes that the length of the hair did not create disturbances or disruptions, and, furthermore, that the plaintiffs were and are good students whose individual behavior and attitudes are not affected by hair length. Furthermore, the evidence establishes that the classmates of the plaintiffs are not opposed to their hair length. Indeed, 200 student signatures of a total of 800 plus were obtained on a petition which was presented to school authorities requesting that the plaintiffs be readmitted to school.

On the other hand, cogent evidence has been presented by the school authorities which establishes good reason for

the adoption of this regulation in La Junta, a rural community.

It appears from the evidence that in 1968 there was adopted a regulation which did not restrict the length of hair. It declared:

> Hair should not fall in front of the eyes. Almost any style or length is acceptable as long as it is neat and well groomed. Attitude might be the only factor when a style is rejected by the administration.

The testimony was to the effect that following the adoption of this it was discovered that the rule was too liberal and too vague and did not lend itself to any regulation whatever. The evidence also establishes that decorum and discipline suffered from the resultant hair lengths. One teacher testified that individual students developed attitudes of defiance and rebellion within the classroom which produced morale problems among members of the faculty. After that, on December 12, 1969, a new regulation was adopted which prohibited the wearing of hair over the eyes, ears, or over the collar. This regulation added "We will still accept most styles just *be reasonable.*"

We had this same question before us previously in *Brick* v. *Board of Education, School District No. 1, Denver, Colorado,* 305 F. Supp. 1316 (1969). In upholding the South High School regulation in that case we concluded that the regulation there involved was not contrary to the First Amendment in that the hair length was not shown to be an expression of viewpoint. This holding was in line with the decision of the Supreme Court in *Tinker* v. *Des Moines Independent Community School Dist.*, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969), which case had to do with the wearing of black armbands by grade school stu-

dents for the purpose of expressing their opposition to war. The Supreme Court in holding that this was a constitutionally protected right distinguished such things as regulation of dress and hair style or deportment. The Court cited with approval *Ferrell* v. *Dallas Independent School Dist.*, 392 F.2d 697 (5th Cir.), cert. denied, 393 U.S. 856, 89 S.Ct. 98 (1968).

Plaintiffs maintain that quite apart from alleged violation of the First Amendment as incorporated in the Fourteenth Amendment, that their rights under the Fourteenth Amendment have been violated because of the irrational and arbitrary action of the School Board in promulgating the regulation in question. However, we conclude that the action of the school authorities in this instance was neither arbitrary nor unreasonable. It is true that the evidence did not establish that there existed disruption raucous in nature. On the other hand, as in *Brick,* it was shown that there was interference with the educational process. In this connection it is to be noted that the classroom is a sensitive atmosphere. In order for the teacher to effectively teach it is necessary that he have attitudes and responses which are conducive to presentation in accordance with full utilization of the teacher's talents and an atmosphere free of extraneous distractions. Evidence showing a breakdown of discipline and student attitudes of defiance are in our view disruption. Similarly, there was evidence that the length of hair hampers the physical education athletic programs.

In our opinion the evidence on behalf of the school authorities sufficiently established that there existed a rational basis for the adoption of the regulation which is here in question and, consequently, the interests of the school as a whole in the regulation outweighs any rights of the student to enjoy complete freedom.

For the above stated reasons we conclude that the constitutional rights of the plaintiffs are not violated and that they are not entitled to the relief sought. Accordingly, the request for an injunction is denied, and the complaint and cause of action are dismissed.

DATED at Denver, Colorado, this 22d day of October, A.D. 1970.

By the Court:

WILLIAM E. DOYLE, *Judge*
United States District Court

Opinion of the United States District Court for the Western District of Oklahoma in *Christmas* v. *The El Reno Board of Education*

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF OKLAHOMA

No. CIV-70-263

GARY CHRISTMAS, A Minor, by his Father and Next Friend, WILLIAM R. CHRISTMAS,

Plaintiffs,

vs.

THE EL RENO BOARD OF EDUCATION, INDEPENDENT SCHOOL, DISTRICT No. 34; LESLIE F. ROBLYER, as Superintendent of El Reno Public Schools; and JERRY HUTCHISON, as Principal of El Reno High School,

Defendants.

PRELIMINARY STATEMENT

The complaint in this case was filed on May 21, 1970 and the attorneys for the defendants accepted service of the complaint and entered their appearance on the same day.

The parties, through their counsel, appeared before the court on May 21, 1970, upon plaintiffs' request for a Temporary Restraining Order. Defendants orally moved to dismiss the case for want of jurisdiction and further urged the court to obstain from exercising jurisdiction on

the grounds that there was no claim or showing that speedy and adequate relief could not be afforded in the state courts. Both issues raised were overruled and the court set the matter for trial on all issues at 10:00 a.m., May 22, 1970, with the agreement of all parties.

The complaint alleged plaintiff was being unlawfully prohibited by acts of the defendants, in their official capacities, from participating in a high school commencement ceremony and the receipt of a "diploma" at said ceremony. The ceremony was scheduled for Sunday, May 24, 1970 at 2:00 p.m.

The complaint requested injunctive and declaratory relief on claims of violation of the first, fourth, fifth, eighth, ninth, tenth, and fourteenth amendments to the Constitution of The United States and jurisdiction was invoked under 28 USC 1343, 2201, 2202, and 42 USC 1981, 1983, and 1975.

Plaintiff alleged his civil and constitutional rights would be violated to his irreparable injury if defendants were permitted to continue to enforce regulations concerning the dress and grooming required for participation in the scheduled ceremony. More specifically, plaintiff complained of the application to him of the regulation that the hair of male students shall not cover their ears, eyes or collar.

At the commencement of the trial on May 22, 1970, defendants renewed their jurisdictional objections which the court took under advisement, and the trial proceeded on its merits. The plaintiff introduced his evidence and rested and the defendants again renewed their jurisdictional objections and alternatively moved to dismiss the action upon the grounds that the evidence failed to present any

claim upon which relief could be granted. The court took these motions under advisement.

Thereupon the defendants presented their evidence and both parties rested.

Findings of Fact

1.

The plaintiff is an 18-year old white male student at El Reno High School, El Reno, Oklahoma, and has regularly attended classes since September, 1969 when he enrolled as a senior.

2.

The evidence is undisputed, as defendants' Exhibit "1" shows, that plaintiff was regularly graduated as of May 22, 1970, ranking 173rd in a class of 190, and was furnished a certificate of graduation and transcript in exactly the same form and bearing the same date as every other member of the graduating class.

3.

The certificate of graduation and accompanying transcript is the only officially recognized document or record evidencing that plaintiff or other students are graduates. It serves as the only permanent school record and certified copies are furnished to institutions of higher learning or to others on request.

4.

In the El Reno school system a diploma is an unofficial document presented in a post graduate ceremony afforded, on a student option basis, to those who have already

graduated. No records are made or kept as to either those students who attend the ceremony, or who receive diplomas at the ceremony. The ceremony is held on the Sunday following official graduation and is similar in many respects to post graduate baccalaureate ceremonies held by various churches in El Reno. Participation in either ceremony is purely by the voluntary choice of the graduates with those in charge of the ceremony establishing prerequisites for those desiring to participate.

5.

The El Reno School System has for a period of at least eight years maintained a consistent and uniform policy with regard to those students participating in commencement and public ceremonies or in other extracurricular activities. The administrative directive implemented on March 2, 1970 was the codification of a long standing policy of the El Reno School System. The constituent hair regulation of the Dress Code relating to public display, disruption, public performances and ceremonies has been in effect and uniformly enforced for eight years or more.

6.

Plaintiff's hair, when he presented himself for enrollment in the early part of September, 1969, was of such a length that it violated the regulation that the hair of male students must not cover the eyes, ears or collar if the student desired to participate in commencement and public ceremonies or other extracurricular activities. Plaintiff was advised of the regulation and specifically told at the time of his enrollment as a senior that he would be unable to participate in the post graduate commencement cere-

mony at which diplomas are received or other extracurricular activities and ceremonies unless his hair was cut to conform with the regulation. Plaintiff was again so advised in October, 1969; November, 1969; April, 1970; and in May, 1970 at times when he made inquiry or the subject came up in connection with other matters.

7.

Plaintiff's mother, who was present with her husband and son at the counsel table throughout the entire trial, was promptly told of the school's requirements of dress, attire and appearance for participation in the post graduate commencement ceremony in early September, 1969; late November, 1969; December, 1969; and again by a letter dated May 7, 1970, which was introduced in evidence by plaintiff. She was fully aware for almost eight months before this suit was filed that unless plaintiff's hair was cut above his eyes, ears and collar he would not be eligible to participate in the subject ceremony.

During the early part of December, 1969 plaintiff's mother went to the high school principal's office and requested the aid of the high school administrative staff to assist her in getting the plaintiff interested in extracurricular activities so that plaintiff would decide himself to get his hair cut. It was suggested that if plaintiff would present himself to the high school golf coach during the spring of 1970 he might be eligible to participate with the golf team if his grades improved; and in such a situation plaintiff would probably decide on his own to have his hair cut. Plaintiff never showed any inclination to or interest in participating in golf or any supervised extracurricular activities and ceremonies.

9.

About two weeks after plaintiff's mother had sought the help of the school administrative staff to arrange a situation or activity whereby plaintiff would decide on his own to have his hair cut, she called defendant Jerry Hutchison, the high school principal, and told him that she would see to it that plaintiff would have his hair cut prior to the commencement ceremony or "he would have to find some place else to live".

10.

On April 21, 1970 plaintiff who had not yet cut his hair came to defendant Hutchison's office and again asked the principal whether or not he would be able to participate in the post graduate commencement ceremony. Mr. Hutchison again, as he had often done over the preceding eight months, advised plaintiff that he would not unless he got his hair cut so that it would not cover his ears, eyes or collar. The plaintiff then requested a hearing before defendant Leslie Roblyer, superintendent of schools. The hearing was held on May 5, 1970, and after the hearing defendant Roblyer informed plaintiff that the principal's ruling was in accord with the policy and regulations of the El Reno Board of Education. On May 19, 1970, pursuant to the request of his attorneys, plaintiff, his mother, father and his attorneys appeared before the El Reno Board of Education appealing the decision of the principal and superintendent. After the hearing, on May 20, 1970, plaintiff's attorneys were advised that the school board had upheld the rulings of the superintendent and principal. This suit followed.

11.

Plaintiff admitted in his own testimony that he had had several fights both on and off the school premises, and acknowledged that his hair was a disruptive influence in the school system during the year. Other students had forceably attempted to cut plaintiff's hair. Plaintiff in his direct testimony admitted that his presence and participation in the scheduled ceremony would be a disruptive element and might cause trouble or a disturbance.

12.

After his enrollment in September of 1969, the plaintiff, in October of 1969, presented to the student council a resolution calling for student participation in a moratorium protesting the involvement of The United States in the Vietnam war. The student council rejected his proposal. Lafer in the same month, the plaintiff and a few other students appeared in the office of the high school principal protesting the school dress code, and presented a proposal for an "underground" student newspaper. He was advised by the high school principal that the dress code would continue unchanged and that if the plaintiff had an opinion for publication, he should present it to be published in the school newspaper, which is published weekly as a regular part of the El Reno Daily Tribune during the school year. The plaintiff and two other students wrote an article which was subsequently published in the school newspaper concerning The United States' involvement in Vietnam. Plaintiff admitted that he had never presented any article or publication for public presentment in the school paper which was turned down. The plaintiff and other students were also advised at the meeting in October

of 1969 that there would be a patriotic Veterans' Day assembly on November 11, 1969, and that if he or any other students objected to the assembly they should advise the school administration so arrangements could be made to have a supervised classroom for such students during the assembly. The plaintiff attended the assembly. On the day of the assembly and a few days prior thereto, the plaintiff wore a black arm band. The plaintiff admitted that he had never been refused the right at that time or thereafter to wear a black arm band. The evidence was undisputed that some students during the assembly turned their backs during the salute to the American flag and it was shortly after the assembly that the plaintiff was involved in several fights.

13.

It was uncontradicted that the principal and school administrators feared for plaintiff's safety, and the principal or vice principal at each change of classroom by plaintiff made themselves conspicuous by being near plaintiff in the school's hallways to prevent fights or disturbances involving plaintiff. Despite these precautions, in at least one instance, a fight in a hallway resulted in the presence of the principal which he was quickly able to stop. Plaintiff consistently refused to listen to suggestions by school counselors that his difficulties with other students might lessen if he cut his hair. Plaintiff testified he thought he had a "personal right" to wear his hair as long as he wanted.

14.

The defendants have been more than reasonable and fair with plaintiff in all respects. He has not been, al-

though the circumstances might warrant it, disciplined, punished or deprived of any right or educational opportunity. He has been permitted to attend and participate in all classes, to regularly graduate, and he has been awarded his certificate of graduation. As is shown by defendants' Exhibit "1", neither the certificate, nor the accompanying transcript, contain any notation or language indicating his conduct or grooming.

15.

The evidence in this case shows beyond any question that the defendants have more than justified the validity and reasonableness of regulations and their uniform enforcement, and accordingly defendants have met their substantial burden of justification. The plaintiff has not been deprived of any educational opportunities or his rights to express his opinions symbolically, orally or in writing.

16.

The hearings, appearances and consideration given plaintiff afforded all of the regular standard procedural and substantive due process rights to which he is entitled, and he has not been denied any basic or fundamental right.

17.

The School Board and its administrative staff have applied the regulations admitted into evidence with consistency and uniformity as the evidence clearly shows, and has not in any way or degree acted unreasonably, arbitrarily, capriciously or discriminatorily. The regulations themselves are reasonable and rational, and represent the expressed judgment of the duly constituted school board whose authority and duty to make such reasonable regula-

tions clearly appear. The School Board by its administrative staff has clearly demonstrated the need and necessity for rules and regulations of this type, and this court finds that in this case the regulation bears a substantial relation to the legitimate concerns of a public educational institution.

18.

The evidence clearly shows that the only obstacle between plaintiff and participation in the post graduate ceremony and receipt of a "diploma" is the length of his hair, and the defendants' testimony was that plaintiff could, if he chose to do so, participate in the scheduled ceremony, provided his hair was not over his eyes, ears or collar and he appeared at the ceremony dressed and groomed according to the other requirements of the ceremony.

19.

It should be noted that the case before the court does not involve any refusal to admit or enroll a student in a public school because of a school dress code. Nor does this case involve the suspension of a student from class attendance because of any school regulation. No educational rights are, or have been denied, and plaintiff having been regularly and formally graduated has been afforded all of the rights and privileges to which he is entitled.

Conclusions of Law

1.

While there is persuasive authority to the contrary, the court concludes it has jurisdiction over the parties and subject of this cause. *Ferrell* v. *Dallas Independent School*

District (5 Cir., 1968) 392 F.2d 697, cert. den. 393 U.S. 856, 89 S. Ct. 98. But see; *Schwartz* v. *Galveston Independent School District* (S.D. Tex. 1970) 309 F.Supp. 1034 and the exhaustive list of authorities cited therein.

2.

While the evidence of this case clearly shows that the defendants could have refused to enroll plaintiff, or have suspended him from attendance, this case involves only the clear and unquestioned right and responsibility of a School Board to promulgate and enforce rules and regulations consistent with the legitimate concerns of a public school system, subject only to constitutional review. *Ferrell* v. *Dallas Independent School District,* supra.

3.

Involving as it does, only the limited and narrow question of whether plaintiff has constitutional or other rights to attend an elective post graduate ceremony without complying with the reasonable dress and grooming requirements established for that and other extracurricular activities and ceremonies, this case is more nearly akin to cases where a student claims a right to play football or participate in a parade of a school band in violation of rules or without the proper band uniform and required grooming. *Estray* v. *LaFourche Parish* (La., 1969) 230 So.2d 443.

4.

The regulations under the evidence in this case, even if subject to the rule requiring a substantial burden of justification to sustain them, are reasonable, uniformly enforced, do not unlawfully or invidiously discriminate, and

the evidence shows valid and compelling reasons for their enactment and enforcement. Neither plaintiff's constitutional nor civil rights have been violated. *Ferrell* v. *Dallas Independent School District,* supra; *Crew* v. *Clones* (S.D. Ind. 1969) 303 F.Supp. 1370; *Snowden* v. *Hughes* (1944) 321 U.S. 1, 64 S. Ct. 397; *Byrd* v. *Sexton* (8 Cir., 1960) 277 F.2d 418; and *Leonard* v. *School Committee* (Mass. 1965) 212 NE2d 468, 14 ALR3d 1192.

5.

While waiver, laches or estoppel, or a combination of them appear to be a clear bar to any relief under the evidence in this case, the court having reached its decision on other grounds does not here pass upon their applicability at this time.

6.

Plaintiff, having shown no violation of any of his rights, is not entitled to declaratory or injunctive relief and judgment, together with costs, will be entered accordingly.

DONE and DATED this ..... day of June, 1970.

LUTHER BOHANON,
Chief District Judge